

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th September, 2012

+ **LPA No. 560/2012**

% **RUCHIKA YADAV & ORS.** **....Appellants**
Through: Appellant No.1 in person.

Versus

**PANDIT DEENDAYAL UPADHYAYA INSTITUTE
FOR PHYSICALLY HANDICAPPED & ANR Respondents**
Through: Mr. Rajiv Bansal, Adv. for R-1.
Mr. Mohinder J.S. Rupal, Adv. for R-2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 23rd March, 2012 of the learned Single Judge in W.P.(C) No.240/2010 preferred by the appellants. Though the said writ petition was preferred seeking several reliefs but the judgment records (and which aspect is not disputed by the appellants) that other reliefs claimed in the petition stood granted to the appellants and thus did not survive for adjudication and the writ petition survived only qua the claim of damages. In so far as the claim for damages is concerned, the learned Single Judge has held that the same was not warranted as the appellants had failed to make out a clear case of breach of

fundamental rights, which could be stated to have resulted in the sufferance of damages. It was further observed that the appellants had not made specific averments and not placed documents in support of their claim on record; in view of the denial by the respondents, several disputed questions of fact arose and the remedy under Article 226 of the Constitution of India was not a proper remedy. The writ petition qua the claim for damages was thus dismissed, granting liberty to the appellants to agitate their claims in appropriate civil proceedings, if so advised.

2. The three appellants took admission in the year 2004 in the Bachelor of Prosthetics & Orthotics course of the respondent no.1 Institute. The said course was of five years duration, culminating in the year 2009. The claim of the appellants for damages was predicated on the respondent no.1 Institute not declaring the result of the three appellants along with the result of their other batch mates declared on 3rd September, 2009 and withholding the same till 1st February, 2010 when it was ultimately declared. While compensation for mental harassment and agony and academic loss as well as financial loss owing to withholding of the result was claimed by all the appellants, the appellant no.2 Shri Chandan Kumar Chandan had also claimed compensation for academic loss suffered on account of being not

able to take admission in Master of International Business with Jamia Milia Islamia, New Delhi for the reason of such withholding of result.

3. The respondent no.1 Institute contested the writ petition pleading, that it is an Autonomous Body under the administrative and financial control of Ministry of Social Justice and Empowerment, Govt. of India; that the appellants interrupted the examination being conducted on 23rd August, 2008 and used un-parliamentary language and behaved in a manner to divert the attention of the examiners and secure marks by unfair means and methods and threatened the invigilators; that an inquiry was ordered and intimation thereof also sent to the respondent no.2 University of Delhi; however pending inquiry, the appellants were allowed to continue with their course; the appellants however did not mend their ways and continued to burden the authorities of the respondent no.1 Institute by filing a large number of applications under the RTI Act on one pretext or the other and preferred appeals against the orders of the Public Information Officer of the respondent no.1 Institute and thereafter writ petitions in this Court; that the other students of the respondent no.1 Institute had also complained against the appellants; that the appellants abstained from the inquiry on one pretext or the other and which resulted in hearing after hearing being given to the

appellants; the proceedings of the inquiry were also delayed on account of superannuation on 31st December, 2009 of one of the members of the Inquiry Committee and the Committee therefore being required to be re-constituted; that during the meeting of the Inquiry Committee on 18th January, 2010, finding that the matter had been disproportionately delayed and the Inquiry Committee could not arrive at any concrete decision due to want of statement of the complainants / students who were reluctant to participate in the Inquiry, it was unanimously agreed by the Inquiry Committee that the matter should be disposed of without any attribution of guilt/wrong doing to any of the students or faculty members and it was suggested that the respondent no.1 Institute may take a decision in view of the said facts; that the final result of the appellants had been withheld for the said reason and upon receipt of the report dated 18th January, 2010 of the Inquiry Committee, the final result of the appellants was declared on 1st February, 2010 as aforesaid.

4. The appellants attribute *mala fides*, fraud, conspiracy and fabrication of documents to the respondent no.1 Institute; some of the incidents cited in the memorandum of appeal are of even prior to the incident aforesaid of 23rd August, 2008 and are not found to be relevant qua the claim of damages and

as such need is not felt to discuss the same here. The appellants else plead that more than 20 versions had been fabricated by the respondent no.1 Institute of the incident of 23rd August, 2008; that the principles of natural justice have not been complied with; that officials against whom the appellants had earlier complained were members of the Inquiry Committee; that the complaint of the incident was made to the respondent no.2 University of Delhi only on 19th August, 2009; explanations of external and internal examiners were recorded after 20 days of the incident and no complaint had been made by them on their own; that the examiners even in their explanation did not mention the names of the appellants and did not produce any material evidence; that decision to call the appellants for hearing before the Inquiry Committee was taken on 21st August, 2009 but the memorandum in this regard was prepared on 19th August, 2009; that several other documents also have been created in back date; inconsistencies are pointed out in the various documents; inconsistencies are also pointed out between the documents and the file notings obtained by the appellants through the medium of RTI. The appellants in the grounds of appeal have urged that the learned Single Judge failed to take on record documents purported to be handed over to him at the time of hearing and which are

filed with this appeal along with an application and which show that the appellant no.2 had received calls in the Academic Year 2010 from Jamia Milia Islamia University, IIM Indore, Sri Ram College of Commerce and Indian Institute of Forest Management, Bhopal and all of which he could not avail of for the reason of his result having been withheld. It is also urged that the learned Single Judge has not given due regard to the appellants no.1&3 being females and the appellant no.2 being physically challenged. It is yet further urged that the respondent no.1 Institute along with its counter affidavit had not produced any documents to establish the incident of 23rd August, 2008.

5. The learned Single Judge in the impugned judgment has referred to (i) *Smt Nilabati Behera alias Lalita Behera Vs. State of Orissa* (1993) 2 SCC 746; (ii) *Rudul Shah Vs. State of Bihar* AIR 1983 SC 1086; (iii) *Chairman, Grid Corporation of Orissa Ltd. (Gridco) Vs. Sukamani Das (Smt.)* (1999) 7 SCC 298; (vi) *Tamil Nadu Electricity Board Vs. Sumathi* (2000) 4 SCC 543; (v) *Mr. Gatakala Venkateswarlu Vs. Union of India* 128 (2006) DLT 1; and, (vi) *S.P.S Rathore Vs. State of Haryana*, (2005) 10 SCC 1 to conclude that damages cannot be awarded to the appellants in writ proceedings.

6. We have heard the appellant no.2 who has appeared in person as well as the counsels for the respondents who appeared on advance notice. The appellant no.2 has drawn our attention to the order dated 20th May, 2010 of the learned Single Judge in the writ proceedings to contend that notwithstanding the other reliefs claimed in the writ petition having not survived, the writ petition was proceeded with on the aspect of compensation. He has next invited our attention to the letter dated 10th March, 2011 of the Shi Ram College of Commerce inviting him for Group Discussion and Personal Interview for admission to PG Diploma in Global Business Operations 2010-2012 batch on 2nd April, 2010. Attention is also invited to the memorandum dated 21st August, 2009 issued to the three appellants calling them to appear before the Inquiry Committee on 25th August, 2009. From the letter dated 10th December, 2008 of the Librarian / PIO of the respondent no.1 Institute, it is shown that the Supdt. Examination had refused to disclose the names of the examiners of the examination held on 23rd August, 2008. Attention is next invited to the memorandum dated 16th/25th November, 2009 calling the appellants to appear before the Inquiry Committee on 27th November, 2009. Inconsistency therewith is shown from the minutes dated 10th September, 2009 of the meeting of the Inquiry

Committee held on 25th August, 2009 desiring the appearance of the appellants before the Inquiry Committee. Attention is also invited to the letter dated 5th September, 2008 of a student to point out the inconsistencies. The appellant no.2 has also cited before us *Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy* AIR 2012 SC 100 and judgment dated 7th January, 2011 of Division Bench of the Madras High Court in Writ Appeal No.2240/2010 titled *Minor S. Kiruthika Vs. State of Tamil Nadu*. He has also handed over a note of judgments pertaining to violation of Article 21, principles of natural justice and other fundamental rights.

7. On the contrary, the counsel for the respondent no.1 Institute has highlighted the non-participation by the appellants before the Inquiry Committee. He has further contended that the appellants even if deprived of admission in the year 2010, have not been able to secure admission in the subsequent years and which demonstrates that they have not suffered any loss and thus the question of awarding them any damages does not arise.

8. We have bestowed our due consideration to the matter in controversy and since the appellants have filed and pursued the appeal in person, also gone through the entire record carefully but are unable to take a view

different from that taken by the learned Single Judge. We may, besides the judgment already noticed by the learned Single Judge, also refer to the recent dicta of the Apex Court in ***Godavari Sugar Mills Ltd. Vs. State of Maharashtra*** 2011 (2) SCC 439 after a consideration of the entire case law including ***Suganmal Vs. State of Madhya Pradesh*** AIR 1965 SC 1741, ***U.P. Pollution Control Board Vs. Kanoria Industrial Ltd.*** 2001 (2) SCC 549 and ***ABL International Ltd. Vs. Export Credit Guarantee Corporation of India*** 2004 (3) SCC 553, making the legal position clear as under:-

- (i) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers;
- (ii) If a right has been infringed—whether a fundamental right or a statutory right and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact

that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realized by the Government without the authority of law;

- (iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the Civil Court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of powers conferred under Article 226 for payment of money;
- (iv) There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment etc. While a petition praying for mere issue of writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the tax collected

was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition;

(v) It is one thing to say that the High Court has no power under Article 226 to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without authority of law, there is no good reason to deny a relief of refund to the citizens;

(vi) Where the *lis* has a public law character or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy will not be denied.

9. Applying the aforesaid law, there is no way that the writ petition in the present case can be said to be maintainable. It may also be noticed that there were hardly any averments in the writ petition to which counter

affidavit had been filed by the respondents and most of the other averments were made in the rejoinder and additional affidavits with documents filed by the appellants before the learned Single Judge and to which the respondents had no occasion to respond. We however, find that even if such an opportunity were to be given to the respondents, the nature of the dispute is such that the question of award of damages in writ jurisdiction does not arise. It is also worth mentioning that though *mala fides*, fabrication, fraud are alleged but the averments are generally against the respondent no.1 Institute without naming any particular staff member or teacher.

10. Even otherwise the allegation of *mala fide* is also a question of fact, which cannot be adjudicated in writ jurisdiction. It was held in ***DD Suri Vs. A.K. Barren*** (1970) 3 SCC 313 that even where substance in the allegation of *mala fide* is found, the proper course in a given case may still be to seek relief by way of a suit if several disputed questions of fact are required to be adjudicated.

11. Recently, the Apex Court in ***Kisan Sahkari Chini Mills Ltd. Vs. Vardan Linkers*** AIR 2008 SC 2160 also reiterated that public law remedy under Article 226 of the Constitution of India is not available to seek damages for breach of contract or specific performance of contract unless

the contractual dispute has a public law element. Reference may also be made to *Binny Ltd. Vs. V. Sadasivan* (2005) 6 SCC 657 where the Apex Court held that even in the matter of termination of employment, no public law element is involved and the remedy of the employees is under the civil or labour law only. It was further held that the powers under Article 226 are to be exercised by applying the Constitutional provisions and judicial guidelines and violation, if any of the fundamental rights and the Court would be reluctant to exercise the power of judicial review in rights on the basis of contracts. It was further held that a contract would not become statutory simply because it has been awarded by a statutory body.

12. We therefore do not find any merit in this appeal and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

SEPTEMBER 11, 2012

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